IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3048 OF 1995

Crest Papers Mills Ltd ..
a Public Limited
Company, duly incorporated
underthe Companies Act 1956,
having its Registered office and
Mills situate at village
Kalivali P.O.Apta, Dist.
Raigadh (Maharashtra State) and
having its Administrative office
at Tarun Plastic Compnd, 2nd
floor, Mogra, Andheri(E)
Bombay-400069. .. Plaintiffs

vs

Sharda Paper Craft Private
Limited, a Private
Limited Company, duly
incorporated under the Companies
Act, 1956 having its office
situate at Post Box No.402,
NAGPUR 440 010 and factory at
M-7,MIDC, NAGPUR-532 410
(Maharashtra State).
.. Defendants

Mr.G.S.Tripathi for Plaintiffs

CORAM : A.S.OKA, J

DATED : 10th September, 2007

JUDGMENT

1. The plaintiffs have filed this suit against the defendants for a money decree in the sum of Rs.2,30,423.69 together with further interest at the rate of 18 % p.a. on the sum of Rs.1,64,885.20. from the date of filing of the suit till realisation.

2. According to the case of the plaintiffs, they are the manufacturers and suppliers of various type of craft board papers and other allied materials produced relating to papers. It is stated that the plaintiffs in their regular course of business

during the period between 5th June, 1992 till 7th September 1992 sold and delivered to the defendants "craft board" papers under 6 different invoices. According to the plaintiffs, the total cost of the goods supplied and delivered to the defendants is Rs.6,34,875/-. It is stated that the goods were despatched through the transporters. Reliance is placed on various consignment notes issued by transporters. It is stated that the plaintiffs claimed Rs.3520 as freight charges by raising a debit note. It is stated that on account of delayed payment of price of the goods, the plaintiffs were entitled to receive Rs.20,742.20 by way of interest on delayed payment. Debit note dated 10th September 1992 was issued accordingly.

3. By a letter dated 5th March 1993 sent by the plaintiffs to the defendants a statement of account as on 5th March 1993 was forwarded by the plaintiffs to the defendants showing that a sum of Rs.4,54,585.20 was payable by the defendants to the plaintiffs. It is stated that the defendants forwarded a cheque in the sum of Rs.25,000/- on 10th March 1993. It is stated that along with their letter dated 3rd May 1993 sent by the defendants, they forwarded a cheque in the sum of Rs.2,64,699/- purportedly in full and final settlement of the claim of the plaintiffs. Along with the said letter, a statement of account was forwarded by the defendants.

4. According to the plaintiffs, they accepted the

cheque in the sum of Rs.2,64,699/- without prejudice to their right to recover the balance amount and the same was communicted by the plaintiffs to the defendants as well as to one Sushil Pugaliya. It is stated that the said fact was telephonically communicated to one Mr.Prakash Agarwal, the concerned officer in charge of the defendants. The plaintiffs also made a request to return the rejected material. As there was no response from the defendants, by letter dated 1st October, 1993 the plaintiffs called upon the defendants to return the material as referred to in the defendant's own statement of account. By a further letter dated 24th September, 1994 sent by the plaintiffs to the defendants, the plaintiffs called upon the defendants to pay the balance amount of Rs.1,64,886.20. It is alleged that though the said letter was received by the defendants, there was no response from the defendants. It is stated in the plaint that as per the books of accounts maintained by the plaintiffs a sum of Rs.1,64,84,620/- was found due and payable by the defendants. It is stated that even according to the case of the defendants, they are liable to return the material worth Rs.1,10,892/- to the plaintiffs. However, the defendants have failed to return the material.

5. The suit was contested by the defendants by filing the written statement. The defendants denied their liability to pay the amount as claimed by the plaintiffs. According to the defendants,

some of the goods received from the plaintiffs were in wet condition. When this was pointed out by the defendants to the plaintiffs, on the request made by the plaintiffs, the goods were got surveyed by the defendants and the survey report was forwarded to the plaintiffs. It is stated that there is no dispute between the parties that goods worth Rs.1,10,892/- were found to be defective. The defendants denied that the cheque in the sum of Rs.2,64,699/- was encashed by the plaintiffs without prejudice to their rights and contentions. It is contended that the material received by the defendants was in wet condition and the survey report disclosed 100 % loss. Lastly, it is contended that it was for the plaintiffs to take back the defective goods worth Rs.1,10,897/- and inspite of repeated communications, the plaintiffs have failed to take back the goods.

6. On 29th July, 2004 following issues were framed

1. Whether the plaintiffs prove that the plaintiffs sold and delviered the "Kraft Board" goods to the defendants and the same were duly accepted and acknowledged by the defendants ?

2. Whether the defendants prove that "Kraft Board" goods were received by them in wet conditioned and not in accordance with the order ?

3. Whether the defendants prove that the suit is barred by law of limitation ?

4. Whether the defendants prove that this Hon'ble Court have no jurisdiction ?

5. Whether the plaintiffs are entitled for decree as prayed for and interest ?

6. What order as to costs ?

7. The plaintiffs led evidence of Rajendra Singh its Managing Director by filing his affidavit dated 25th August, 2004 in lieu of evidence. On 10th January, 2005 Advocate for the defendants cross-examined the said witness for sometime and the suit was adjourned to 17th September, 2005 for further cross examination. On 17th September, 2005 Advocate for the defendants cross examined the said witness for sometime and suit was adjourned to 31st January, 2005 for further cross examination.

8. The Order dated 9th March, 2005 was passed by this Court records that advocate for the defendants was absent on that day and by way of last chance, suit was adjourned till 21st March, 2005 for completing the cross examination. Order dated 25th April, 1995 records that the defendants and their advocates were absent. Therefore, the witness of the plaintiffs was discharged and on 13th June, 2005 suit was kept for passing ex parte order. When the suit was listed before this Court for directions, none appeared for the defendants. Learned counsel for the plaintiffs made a statement that the plaintiffs were not desirous of examining any other witness and hence, the suit was kept on 6th September, 2007 for recording the evidence of the defendants. None appeared for the defendants on that day. Therefore, arguments were heard on that day. Today, the suit is kept for dictation judgment. Today, when the suit is called out, none appear for the defendants.

9. I have perused the notes of evidence, the documents produced by the plaintiffs and the pleadings of the parties. In view of the averments made in the written statement, I find that there is no dispute about supply of goods under six invoices set out in para 2 of the plaint by the plaintiffs to the defendants. The witness examined by the plaintiff Mr.Rajendra Singh has set out in his affidavit in lieu of evidence the details of the various payments made by the defendants. The plaintiffs have produced a letter dated 14th December, 1992 sent by the defendants. The said letter has been marked as Exhibit P-5. The witness has referred to a letter dated 18th December, 1992 sent by the plaintiffs to the defendants enclosing therewith a statement of account maintained by the plaintiffs. The said letter has been marked as Exhibit P-6. In the letter dated 14th December, 1992 the defendants expressed various difficulties encountered by them. In reply dated 18th December, 1992 the plaintiffs pointed out that they were suffering loss as their bankers were charging penal interest. Therefore, a request was made to the defendants to sit across the table and finalise the modality of payments. The plaintiff have produced the office copy of the letter dated 5th March, 1993 sent to the defendant. The said letter has been marked as Exhibit P-7. Along with the said letter, a statement of account of the defendants as on 5th March, 1993 was forwarded by the plaintiffs to the defendants showing that a sum of Rs.4,33,845/- was

due and payable by the defendants. The statement of account is also a part of the document at Exhibit P-7. The plaintiffs have produced letter dated 3rd May, 1993 addressed by the defendant to Mr.Sushil Pugalia enclosing therewith a cheque in the sum of Rs.2,64,699.00 drawn in favour of the plaintiffs in full and final settlement of the claim of the plaintiffs. Along with the said letter the defendant forwarded a statement of Account showing that as of 3rd May 1993 a sum of Rs.2,64,699 was payable by the defendants to the plaintiffs. The said cheque were encashed by the plaintiffs. The witness examined by the plaintiffs has stated that the plaintiffs received the cheque without prejudice to their rights to recover the balance amount. The witness further stated that the said fact was communicated by the plaintiffs to one Mr. Sushil Pugaliya and Mr.Prakash Agarwal. It must be stated here that there is no cross examination of the said witness on this aspect and therefore the case made out by the plaintiffs that they had informed Mr.Sushil Pugaliya and Mr.Prakash Agarwal that the said cheque was accepted by the plaintiffs without prejudice to their right of recovering the balance amount has to be accepted. There is also a foundation made for the said case by making necessary averments in the plaint.

10. It must be stated here that in the statement of accounts enclosed by the defendants along with the letter dated 3rd May, 1993 it is stated that value of the goods to be returned by the defendants

to the plaintiffs is Rs.1,10,892/-. The plaintiffs have relied upon the office copy of the letter dated 1st October, 1993 sent by them to the defendants. The said letter has been marked as Exhibit P-8. By the said letter the plaintiffs requested the defendants to either return the rejected material or send payment for the same. As there was no response from the defendants, by a letter dated 24th September, 1994 the plaintiffs called upon the defendants to pay the outstanding amount of Rs.1,64,886.20. The office copy of the said letter has been produced in evidence and is marked as Exhibit P-9 and the postal acknowledgment of the said letter has been produced in evidence as Exhibit P-10.

11. According to the case of the plaintiffs, letter dated 24th September, 1994 has not been replied to. In the affidavit in lieu of examination in chief it is stated that the plaintiffs have taken out marine insurance policy of the United India Insurance Co.Ltd whereby all the goods despatched by the plaintiffs to their purchasers were duly insured for all losses and damage etc. It is stated that the defendants after receiving initial two consignments informed the plaintiffs that they were having their own marine insurance policy dated 13th April, 1992 of the National Insurance Co.Ltd and all future consignements sent by the plaintiffs would be subject to the said marine policy taken out by the defendants. It is stated that that is the reason

why the plaintiffs did not charge insurance amount in the final commercial invoices prepared at Mumbai. The witness has stated that once the consignment of goods left the plaintiffs' mills, it was exposed to all losses and damages on account of the defendants and not of the plaintiffs. There is no challenge to this version of the witness in cross examination.

12. In paragraph 11 of the affidavit in lieu of examination in chief, the witness has set out all the details of the amounts payable by the defendants against various invoices and the details of the debit notes as well as payments received from the defendants including the said amount of Rs,2,64,699/-. The said details incorporated in para 11 of the affidavit in lieu of examination-in-chief are consistent with the statement of account enclosed by the plaintiffs along with the said letter dated 5th March, 1993 addressed to the defendants. The plaintiffs have claimed the principal amount of Rs.1,64.855/- and interest on the said amount from 5th March, 1993 till the date of the filing of the suit at the rate of 18% p.a. It is stated by the aforesaid witness of the plaintiff that on account of delay in payment by the defendants, they were required to pay penal interest to the bank at the rate of 30 % p.a. along with other charges. Therefore, interest is claimed till the date of filing of the suit at the rate of 18 % p.a. There is no cross examination of the said witness on the aspect of

payment of penal interest at the rate of 30 % by the plaintiff to their bankers. Therefore on the basis of oral evidence as well as documentary evidence, the plaintiffs have established that the defendants were liable to pay principal amount of Rs.1,64,855.20 together with interest on Rs.1,65,538.49 at 18 % p.a. from 5th May, 1993 till date of institution of suit.

13. No evidence has been led by the defendants to show that they have returned the alleged damaged goods which according to them were worth Rs.1,10,892/-. Value of the alleged damaged goods has been mentioned by the defendants in the statement of account enclosed along with letter dated 3rd May, 1993. No evidence has been led by the defendants to show that the goods were duly delivered to them in wet condition as alleged by them. Therefore, issue nos. 1 and 2 will have to be answered in favour of the plaintiffs.

14. In so far as issue regarding bar of limitation is concerned, the plaintiffs have placed reliance on letter dated 6th November, 1992 sent by the defendants to them. The said letter has been admitted in evidence and marked at Exhibit P-4. The said letter discloses that a cheque of sum of Rs.50,000/- dated 6th November, 1992 bearing no.711537 drawn on Indian Bank, Nariman Point branch, Bombay was forwarded to the plaintiffs by the defendants as an on account payment. Moreover, along with the letter dated 3rd May, 1993 the

defendants forwarded cheque in the sum of Rs.2,64,699/- to the plaintiffs. It is established by the evidence that the said cheque was accepted and encashed by the plaintiffs withiout prejudice to their right to recover the balance amount. The plaint has been lodged on 8th August, 1995. In view of the aforesaid two payments, the suit claim will have to be held as within limitation.

15. 4th issue is as regards jurisdiction. I find that on 21st July, 1995 a leave under clause XII of the Letters Patent was granted by this court in favour of the plaintiffs. There is no application made by the defendants for revocation of the leave.

16. The plaintiffs have prayed for further interest at 18 % p.a. Considering the facts and circumstances of the case, further interest will have to be granted at 10 % p.a. on the principal amount.

17. Hence, I pass the following order :

(i) There will be a decree in terms of prayer clauses (a) and (b) subject to modification that further interest payable will be at 10 % p.a. on the sum of Rs.1,64,885.20 from the date of institution of suit till realisation of amount.

(ii) The defendants are ordered and decreed to pay proportionate costs of the suit to the plaintiffs.

Certified copy is expedited.

(A.S.Oka, J)